IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

MFA.No. 1273 of 2001(B)

OPMV.1050/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
.....

APPELLANT/PETITIONER:

MINOR AJEESH,S/O.SANKARAN,
REP. BY HIS GUARDIAN NEXT FRIEND AND FATHER
SANKARAN, S/O.CHERUKANDAN, THACHAPPULLY HOUSE,
PYNOORE, P.O. PERINGOTTUKARA, THRISSUR DISTRICT.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENTS/RESPONDENTS:

1.SATHYAN.T.S.,S/O.SUBRAMANIAN,
THOTTIPULLI HOUSE, PORATHUSSERY P.O.,
THRISSUR DISTRICT.

2.SURENDRAN,S/O.BALAN,VAKAYIL HOUSE,
PULLAKARA, KARALAM, THRISSUR DISTRICT.

3.THE NEW INDIA ASSURANCE CO. LTD., BRANCH
OFFICE, THRIPRAYAR.

BY ADV. SRI.N.S.MOHAMMED USMAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1273 OF 2001 (B)

Dated 14th December, 2007

JUDGMENT

Koshy,J.

A 14 year old boy suffered injuries in a motor accident due to the negligent driving of the 2nd respondent, driver of the lorry owned by the 1st respondent and insured by the 3rd respondent Insurance company. He, represented by his father filed an application for compensation claiming an amount of Rs.4,30,000/-. Only quantum of compensation is disputed in this appeal and we are only considering the same.

2. The tribunal has considered the medical evidence as follows:

> "After the accident, the petitioner was taken to Medical College Hospital, Thrissur as evidence from Ext.A2, which is the accident cum wound certificate. X-ray of the pelvis revealed fracture to the left superior pubic ramous. ExtA6 are the discharge summaries which would go to show that he who was admitted on 8.2.1998 was discharged on 5.3.1998. He had undergone surgery to the urinary bladder, since there was a block. He was again admitted to the same hospital on 11.1.1999 and was discharged on 4.2.1999. On 22.1.1999 he had one more operation for the membranous urethra stricture. He was again admitted to the same hospital on

> 31.5.1999. On 4.6.1999 he had undergone one more surgery to correct the stricture of urethra. It was dilated and he was discharged on 7.6.1999. Ext.A7 series are the O.P. Tickets which would go to show that he was seen intermittently at Medical College Hospital as O.P.Exts.X1, X2 and X3 are the case sheets which would go to show that he had undergone open supra public systectomy and urinary bladder surgeries for the repair of urinary bladder and was inpatient for about 58 days on three different occasions. According to him, till 4 months prior to the date of his examination a catheter tube was inserted after making a hole in the abdominal region just over the urinary bladder. According to him he needs one more operation."

Petitioner has produced Ext.A16 certificate issued by the Urologist. Due to the stricture of urethra he has urinary incontinence and erectile disfunction which needs prolonged treatment. These problems are the result of fracture to the pelvis and rupture of urethra he had occurred on 8.2.1998. According to the said certificate, his permanent disability is 35%. To prove Ext.A16 certificate the said doctor was summoned and examined as PW2. According to him, due to the rupture of the urethra there is narrowing of the urethra. So, he has loss of control over urine. According to him, he has erectile disfunction also. It is further stated that he will have to undergo repeated major surgical procedures to correct the urethra and according to him, this would probably

continue during the rest of his life. It is also stated that the erectile disfunction will affect his marriage prospects also. It is also stated that with the present ailment he won't be able to do any hard work. It is also stated by him that there is chances of deterioration as age advances. Tribunal has assessed 35% disability as certified in Ext.A16. Being a minor, notional income of Rs.18,000/- was taken and disability compensation was calculated. It is the contention of the petitioner that as per the certificate produced, he was unable to continue his studies. A Neurologist who issued Ext.A16 was examined and he deposed that he is unable to do any hard work. He had already undergone three major surgeries. Therefore the effect of the accident is 100% loss of earning capacity but the physical disability certified by the doctor is 35%. It was further contended that he has to change the catheter periodically and because of the future treatment, continued medical assessment is necessary and in view of the costs of medical expenses, the amount awarded is hardly enough taking his medical expenses. His disability is also life long. Considering the after effects of the accident and his loss of earning capacity also and considering the fact that he has to continue further medical treatment in his life, we are of the opinion that he should be granted an additional amount of Rs.75,000/- for future medical

expenses and loss of earning capacity. The above amount should be deposited by the 3rd respondent Insurance company with 7.5% interest from the date of application till its deposit. On deposit of the amount, Rs.25,000/- can be disbursed to the claimant and balance should be deposited in a nationalised bank for five years and periodical interest can be disbursed to him. Appeal is accordingly partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1273 OF 2001 (B)

JUDGMENT

Dated 14th December, 2007